uiIN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE FIFTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION NO : 21620 of 2000

Between:

P.Kanakaiah S/o.Mallaiah
R/o.Dubbak, Medak District

..... PETITIONER

AND

1 Andhra Pradesh State Road Transport Corporation Rep. by Regional Manager Medak Region Sangareddy

2 Andhra Pradesh State Road Transport Corporation Rep. by Deputy C.T.M. Medak Region Sangareddy

3 Andhra Pradesh State Road Transport Corporation Rep. by Depot Manager Siddeipet Depot Siddipet

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ, direction or order more particularly one in the nature of Writ of Certiorari calling for records from the 1st Respondent in Proc.No.PA/675(7) 97 RM MDK dated 15.9.97 and quash the same as arbitrary to the extent it went against the petitioner depriving his past service, consequential benefits and consequently direct the respondent to give effect of the past service and consequential benefits to the petitioner and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Counsel for the Petitioner: M/s H.SRINIVASA RAO & VIJAYALAKSHMI

Counsel for the Respondents: MR.VTM PRASAD, STANDING COUNSEL

The Court made the following :

ORDER

Heard Mr.H.Srinivasa Rao, learned counsel appearing on behalf of the petitioner and also Mr.VTM Prasad, learned Standing counsel appearing on behalf of the respondent corporation.

The petitioner herein, who has been working as conductor filed this Writ Petition, *inter alia* seeking a Mandamus challenging the impugned order, dated 15-09-1997, where under exercising the power of appeal/review, the respondents have directed for fresh appointment, as illegal.

The case of the petitioner is that he was initially appointed as Conductor for quite a long time. However during a check conducted on 02-03-1996, based on certain allegations, he was removed from service as per the order dated 06-09-1996 after holding an enquiry. Thereafter he preferred an appeal and the same was dismissed by the 2nd respondent as per the order, dated 16-12-1996. Subsequently, the petitioner approached the 1st respondent who after reconsidering the entire case, passed the impugned order by re-appointing the petitioner as a fresh conductor. The case of the petitioner is that as per the regulation and also as per the principles laid down by this Court, the Appellate or Reviewing authority has no power to order fresh appointment. Hence the Writ Petition.

Mr.V.T.M.Prasad, learned Standing Counsel appearing on behalf of the respondent corporation sought to sustain the impugned action. Having regard to the length of service, the respondents have taken a lenient view to order fresh appointment. Therefore, it does not call for any interference.

Having considered the submissions made and on perusal of material, the only question which arises for consideration on the facts and circumstances of the case is, as to whether the petitioner is entitled for reinstatement with all other benefits?

There is no dispute of the facts as referred above. Consequent upon a check conducted, some irregularities were found and the petitioner was removed from service against which, he preferred an appeal which was also dismissed. In further review, the 1st respondent directed for fresh appointment. In support of it, the petitioner sought to place reliance on the circular issued by the respondent corporation vide A1/27(7)/82-PD, dated 04-06-1982 where under it was directed that fresh appointment by way of disposal of an appeal against the removal or dismissal order appears basically an improper decision since the regulation do not permit of such appointment. Considering the very same circular, this Court as per judgment in W.P.No.20525 of 1993, dated 30-11-1994 held that regulation does not permit any such authorities to order fresh appointment and therefore, set aside the same directing reinstatement with seniority.

It is represented on behalf of the petitioner that the said Judgment of the Single Judge was also confirmed in the appeal by a Division Bench of this Court in W. A.No.782 of 1995 dated 25-05-1995 having regard to the fact that the very decision to order fresh appointment is wholly unsustainable. Even on a reading of the allegations made against the petitioner, it is seen that neither they are sufficient to remove the petitioner from service nor to order fresh appointment having regard to length of service. Therefore, it is not the case to order any such removal or order fresh appointment.

In the circumstances, the Writ Petition is accordingly allowed and the impugned order including the order, dated 06-09-1996, removing the petitioner from service are set aside. The petitioner shall be reinstated with continuity of service with all other attendant benefits including back wages. No costs.

05-04-2005

Hsd

That Rule Nisi has been made absolute as above.

Witness, the Hon'ble Sri Bilal Nazki, the acting Chief Justice, on this Tuesday, the Fifth day of April, 2005.

Asst. Registrar

To

1 The Regional Manager, Andhra Pradesh State Road Transport Corporation Medak Region Sangareddy

2 The Deputy C.T.M. Andhra Pradesh State Road Transport Corporation Medak Region Sangareddy

3 The Depot Manager, Andhra Pradesh State Road Transport Corporation Siddeipet Depot Siddipet

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